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No. 67

In the Supreme Court of the United States

OCTOBER TERM, 1945

THOMAS PAPER STOCK COMPANY ET AL.,
PETITIONERS

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT

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BRIEF FOR THE PRICE ADMINISTRATOR

OPINION BELOW

The opinion of the United States Emergency Court of Appeals is reported at 148 F. (2d) 831.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered March 27, 1945 (R. 79). The petition for a writ of certiorari was filed April 26, 1945, and granted June 4, 1945. Jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, 50 U. S. C. App., Supp.

IV, Sec. 901 (Appendix, *infra*, pp. 22–23), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. Sec. 347).

QUESTIONS PRESENTED

1. Whether under Section 203 (a) of the Emergency Price Control Act a protest may properly be filed against a maximum price regulation after the alleged ground of invalidity of the regulation has been removed by action of the Price Administrator.

2. Whether the construction of the Act by the court below, as not authorizing the filing of such a protest, has deprived petitioners of due process of law.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, appear in the Appendix, *infra*. The maximum price regulation involved and the pertinent amendment thereto appear in the Federal Register (7 F. R. 9732, 8 F. R. 12554).

STATEMENT

On November 21, 1942, the Price Administrator issued Maximum Price Regulation No. 30 establishing specific maximum prices for various grades of wastepaper. So far as here relevant, the Regulation provided that unsorted wastepaper might not be sold to consumers thereof at a price

higher than the maximum price prescribed for No. 1 mixed paper.[1]

On July 16, 1943, the Emergency Price Control Act of 1942 was amended by the addition of Section 2 (j), the so-called Taft Amendment, 57 Stat. 566. Section 2 (j) provides that "Nothing in this Act shall be construed * * * (3) as authorizing the Administrator to standardize any commodity, unless the Administrator shall determine, with respect to such standardization, that no practicable alternative exists for securing effective price control with respect to such commodity; * * *." For the purpose of this proceeding it is conceded that Maximum Price Regulation No. 30 "standardizes" unsorted waste paper and therefore falls within the purview of Section 2 (j) (3) of the Act.

On September 11, 1943, the Administrator amended the preamble to Maximum Price Regulation No. 30 by adding the following sentence thereto:

> Insofar as this regulation uses specifications and standards which were not, prior to such use, in general use in the trade or industry affected, or insofar as their use was not lawfully required by another Gov-

[1] On December 28, 1943, the section involved was amended by Amendment No. 6 (8 F. R. 17483). The amendment made no change relevant to the instant case.

> ernment agency, the Administrator has determined, with respect to such standardization, that no practicable alternative exists for securing effective price control with respect to the commodities subject to this regulation.

This amendment was made by Supplementary Order No. 64,[2] which was accompanied by a statement of the reasons for its issuance (R. 35–41). At the same time the Administrator issued a supplementary statement of the considerations involved in the issuance of Maximum Price Regulation No. 30 (R. 10–12).

On December 17, 1943, an indictment under Section 205 (b) of the Act was returned in the United States District Court for the Northern District of Illinois, alleging that at specified times between July 16 and September 11, 1943, petitioners had made sales of unsorted wastepaper at more than the maximum price prescribed by the Regulation. On June 29, 1944, a civil action under Section 205 (a) and (e) of the Act was brought against petitioners by the Administrator in the same court, alleging similar violations (R. 57, 64; see R. 8).

On June 15, 1944, petitioners filed a protest against Section 1347.14 (d) of the Regulation purportedly pursuant to Section 203 (a) of the Emergency Price Control Act of 1942, as amended

[2] 8 F. R. 12554.

(R. 1–9). It was contended in the protest that Maximum Price Regulation No. 30 was currently invalid. Petitioners further specifically urged that Section 1347.14 (d) of the Regulation be declared to have been invalid between July 16, 1943, the date of enactment of the Taft Amendment, and September 11, 1943, the date when the Administrator published a determination under clause (3) of the Taft Amendment, *supra*, p. 3.

On July 29, 1944, the Acting Administrator issued an order, accompanied by an opinion, denying petitioners' protest (R. 17–31). Thereupon, on August 26, 1944, petitioners filed a complaint with the Emergency Court of Appeals pursuant to Section 204 (a) of the Emergency Price Control Act of 1942, as amended, seeking review of the denial of the protest (R. 50–54). The court dismissed the complaint, holding that the contested provision of Maximum Price Regulation No. 30 was currently valid and that the court had no jurisdiction under Section 204 (a) of the Act to consider the objection that the provision had been invalid during the period July 16 to September 11, 1943, on account of the Administrator's failure to publish his determination that there was no practicable alternative for securing effective price control (R. 64–79). This decision is the subject of the present review on certiorari.

Meanwhile, on June 30, 1944, the Stabilization Extension Act of 1944 (Public Law 383, 78th

Cong., 2d Sess.) became effective, amending the Emergency Price Control Act. This act added to Section 204 of the Emergency Price Control Act a new subsection (e), *infra*, pp. 23–25, which provides (1) that defendants in enforcement proceedings under Section 205 may secure review of maximum price or rent regulations through a direct complaint to the Emergency Court of Appeals on a showing of good faith and reasonable excuse for failure to file a protest earlier; and (2) for the stay or dismissal of, or vacation of judgment in, actions brought under Section 205 under certain circumstances. On June 8, 1945, petitioners filed in the Emergency Court of Appeals a complaint under Section 204 (e) of the Act, pursuant to leave granted on May 10, 1945, by the Federal District Court for the Northern District of Illinois, Eastern Division, in Case No. 43 Cr. 735. On July 21, 1945, respondent filed a motion to dismiss this complaint. Oral argument was heard on September 7, 1945, following the denial of petitioners' motion to stay the proceedings until after final decision of the present case in this Court, and on October 5 the Emergency Court rendered a judgment dismissing the complaint on its merits, holding that the enactment of the Taft Amendment did not invalidate Maximum Price Regulation No. 30 pending the Administrator's determination made September 11, 1943. Certio-

rari has been granted to that decision in *Thomas Paper Stock Co. and Alvin E. Sandroff* v. *Bowles*, No. 578, this Term, set for argument with the present case. The prior refusal of the Emergency Court of Appeals to take jurisdiction of the same issue in the proceeding below is the only question presented by the present case.

Subsequent to the decision by the Emergency Court of Appeals disposing of the merits of petitioners' objections to the validity of the regulation, respondent filed a motion to dismiss the writ of certiorari in the present case on the ground of mootness. On January 2, 1946, this Court ordered that further consideration of the motion be postponed to the oral argument of this case.

SUMMARY OF ARGUMENT

I

The writ of certiorari should be dismissed for the reason that this cause has now become moot. By means of the procedures established under Section 204 (e) of the Act, petitioners have obtained from the Emergency Court of Appeals, and may now obtain from this Court, a determination of the issue which they sought to present by the filing of a protest with the Price Administrator. Consequently, petitioners have already obtained all the consideration which could be accorded to their contention in the instant proceeding.

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II

The construction given to Section 203 (a) of the Emergency Price Control Act by the court below does not deprive petitioners of due process of law. Ample opportunity to secure judicial review of objections to the price regulation is afforded under the statute by the right to file a protest prior to removal of the alleged ground of invalidity and by the procedure, of which petitioners have availed themselves, for securing leave in an enforcement action to file a complaint with the Emergency Court of Appeals. Petitioners' contentions are based on hypothetical and improbable situations, not here presented, which do not show violation of constitutional guaranties.

III

The Emergency Price Control Act does not authorize the filing of a protest solely for the purpose of securing a determination as to the past validity of a regulation. This construction of the Act is required both by the language of the statute and by the entire plan for the administration and review of price regulations. The appropriate and exclusive remedy for one who, by reason of an enforcement action, is concerned solely with the past validity of a price regulation, is the procedure prescribed in Section 204 (e) of the Act.

ARGUMENT

I

THIS CASE HAS BECOME MOOT AND THE WRIT SHOULD BE DISMISSED BECAUSE ITS SOLE PURPOSE, NAMELY OBTAINING REVIEW OF THE VALIDITY OF THE CHALLENGED PRICE REGULATION, HAS BEEN SERVED BY THE PROCEEDING BROUGHT BY PETITIONERS PURSUANT TO SECTION 204 (e) OF THE EMERGENCY PRICE CONTROL ACT, AS AMENDED

The respondent's argument upon this point is contained in his motion to dismiss (see *supra*, p. 7), to which the Court is respectfully referred.

II

THE CONSTRUCTION GIVEN TO SECTION 203 (a) OF THE EMERGENCY PRICE CONTROL ACT BY THE COURT BELOW DOES NOT DEPRIVE PETITIONERS OF DUE PROCESS OF LAW

Petitioners' basic contention is that the Emergency Price Control Act as interpreted by the court below denies to persons charged with violation of maximum price or rent regulations an unconditional right to judicial review of the validity of the regulations and therefore contravenes the due process clause of the Fifth Amendment. The abstract nature of this contention is illustrated by the fact that petitioners have now obtained from the Emergency Court of Appeals, in the proceeding under Section 204 (e) (1) of the Act, a determination of the substantive issue

which they sought to raise by filing the protest in this case with the Price Administrator. This fact emphasizes more effectively than extended argument could do that petitioners' objection is not that the statute as interpreted by the court below has actually deprived them of the right to judicial review of a regulation which they are charged with having violated, but rather that in some situations, not here presented, it may have that effect.

This Court has already had occasion, in *Yakus v. United States*, 321 U. S. 414, to pass upon a similar objection to the provisions of the Emergency Price Control Act of 1942, before the liberalizing amendments in the Stabilization Extension Act of 1944. Under the statute as it then stood, the only avenue to judicial review of a price or rent regulation was through the protest procedure of Section 203 (a), access to which was limited to sixty days from the issuance of the regulation except as to grounds of objection arising more than sixty days after the issuance of the regulation. This Court held that a defendant in a criminal proceeding, who had not attempted to file a protest against the regulation which he was charged with having violated, was not deprived of due process of law because he could not challenge the validity of the regulation in the criminal proceeding. After observing that the Emergency Price Control Act was "unlike most

penal statutes and regulations whose validity can be determined only by running the risk of violation," this Court concluded that there was "no principle of law or provision of the Constitution which precludes Congress from making criminal violation of an administrative regulation, by one who has failed to avail himself of an adequate separate procedure for the adjudication of its validity * * *" (321 U. S. at 444).

Petitioners have not been denied an opportunity to contest the validity of the regulation, nor is it likely under the Act that anyone who diligently seeks a determination of the validity of a regulation could be penalized for its violation without having such an opportunity. Even before the direct complaint procedure was added to the Act, petitioners could have secured full review through the protest procedure which was available to them between July 16 and September 11, 1943, when the alleged violations occurred. It is true that the period would have been shorter if the administrative action removing the basis of objection had been taken earlier; but the opportunity would have been afforded as long as it was needed to test a regulation which continued to threaten petitioners. The only threat remaining after the removal of the objection to the regulation was that of a possible enforcement proceeding based upon the regulation in its prior form; and the opportunity to meet this threat if it should materialize was provided in Section 204 (e), of which

petitioners have availed themselves and which has procured full consideration for their contention in the Emergency Court and will produce a decision upon it in this Court.

Nor is it an objection that petitioners might, possibly erroneously, have been denied leave to file a complaint under the terms of Section 204 (e) (1) on the ground that they had failed to establish good faith or substantial excuse for not having filed a protest. This is a hypothetical objection comparable to possible deficiencies in the protest procedure which this Court dismissed as irrelevant in the *Yakus* case, on the ground that it had not been shown that they were the necessary effect of the statute or that, if they did occur, there would not be adequate means of securing judicial relief. If a district court should refuse to grant leave to file a complaint in the Emergency Court of Appeals in a meritorious case, the defendant could properly assign that refusal as error in the enforcement proceeding and make it the basis of appeal to the Circuit Court of Appeals and, if need be, of a petition for review in this Court. *United States* v. *Horns,* 147 F. (2d) 57, 59 (C. C. A. 3). We submit that no further remedy is necessary.

III

THE COURT BELOW WAS CORRECT IN INTERPRETING THE EMERGENCY PRICE CONTROL ACT AS NOT PERMITTING THE FILING OF A PROTEST SOLELY FOR THE PURPOSE OF SECURING A DETERMINATION AS TO THE PAST VALIDITY OF A REGULATION

In so far as petitioners' argument raises a question of statutory construction, it runs counter to the entire plan established by the Act for the administrative and judicial review of price regulations. The gravamen of the decision of the court below is that the protest and judicial review provisions of the Act do not contemplate the imposition upon the Price Administrator of the burden of considering objections to regulations issued by him after the basis of objection has been removed by amendment or supersession of the regulation. The reasons why we contend that the construction placed upon the Act by the Emergency Court of Appeals is correct are more fully set forth in the Price Administrator's brief in *Collins et al.* v. *Bowles,* No. 393, this Term. They will be summarized briefly here.

As this Court observed in the *Yakus* case, *supra,* Congress sought to meet the grave danger of wartime inflation "by a practicable and expeditious means which would operate with such promptness, regularity and consistency as would minimize the sudden development of commodity price disparities" (321 U. S. at p. 432). The method adopted was a single procedure for review "beginning

with an appeal to the Administrator's specialized knowledge and experience * * * and affording to him an opportunity to modify the regulations and orders complained of before resort to judicial determination of their validity" (p. 433). The statutory requirement that objections must be presented to the Administrator before they may be considered by the Emergency Court of Appeals; the authority given to the Administrator to modify a regulation even while a complaint involving its validity is pending before the court; and the numerous provisions designed to assure prompt action by the Administrator (sections 204 (a), 203 (a), (d) of the Act), all point clearly to the conclusion that the protest procedure was designed for the purpose of securing review of regulations which are currently controlling business transactions. The provision in Section 203 (a) that only a person "subject to any provision of [a] regulation" has the right to "file a protest specifically setting forth objections to any such provision" evidences the same governing principle, for the natural meaning of the quoted language is that the provision to be challenged must regulate the business operations of the challenger at the time he files his protest.[3]

[3] Because of the peculiarity of the substantive objections in this particular case, petitioners are still subject to the body of the same regulatory provisions to which they were subject before the Administrator removed the ground of their objection by amending the preamble and the statement of con-

Consideration of the magnitude of the Administrator's task of continuously modifying regulations in order to increase their effectiveness and relieve persons subject to them of unwarranted hardship, emphasizes the unreasonableness of construing the statutory plan to require the Administrator also to assume the burden of reconsidering provisions which have been superseded. See the Administrator's brief in *Collins et al.* v. *Bowles, supra,* and in *Utah Junk Co.* v. *Bowles,* No. 400, this Term.

The changes in the review procedure effected by the Stabilization Extension Act of 1944 reinforce the conclusion that protests may not be filed after the objection has been cured. As explained above, new subsection (e) to Section 204 provides a special method by which a defendant in an enforcement proceeding may obtain from the Emergency Court of Appeals a decision as to the

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siderations accompanying the regulation. Petitioners' argument would apply equally, however, if the curative action were a change in the substance of the regulation.

If it is petitioners' theory that they remain "subject to" the regulation so long as they are liable to penalties for its violation, they ignore the distinction, clearly pointed out by this Court in *United States* v. *Hark*, 320 U. S. 531, between the operation of the regulation and the continuing effect of the statute itself. Having violated the regulation, the petitioners, by virtue of Section 4 (a) of the Act, became subject to statutory penalties; and their liability continues until cut off by the applicable statute of limitations. This fact does not render them "subject to" the regulation within the ordinary meaning of those words.

validity of a superseded regulation which, if favorable to them, provides a complete defense to the enforcement proceeding. This method is available only upon a showing to the enforcement court that the application is made in good faith and that there was a reasonable excuse for failure to file a protest before the commencement of the enforcement action. To allow the filing of protests after elimination of the basis of objection would nullify the limitations imposed by Congress upon the availability of the procedure provided in Section 204 (e) (2).

Moreover, to allow the filing of protests after correction of the objections would make the availability of the defense of invalidity depend upon the fortuitous completion of the protest and review procedure before final judgment in the enforcement proceeding. Section 204 (e) (2) prohibits the stay of an enforcement action because of the pendency of a protest filed after its commencement. Consequently, the construction here urged by petitioners would cause the outcome in certain cases to depend upon the time factor in two parallel proceedings.

CONCLUSION

We submit, in view of the foregoing, that the present structure of the Emergency Price Control Act, as well as its original plan for the review of price regulations, requires the conclusion that protests may not be filed under Section 203 (a)

after the grounds of alleged invalidity have been removed by administrative action.

J. HOWARD MCGRATH,
Solicitor General.
RALPH F. FUCHS,
Department of Justice.
RICHARD H. FIELD,
General Counsel.
JACOB D. HYMAN,
Associate General Counsel,
JOSEPHINE H. KLEIN,
Attorney,
Office of Price Administration.

FEBRUARY 1946.

APPENDIX

Pertinent provisions of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, 50 U. S. C. App. Supp. IV, Sec. 901, as amended by the Stabilization Extension Act of 1944, Public Law 383, 78th Cong., 2d Sess., and by Public Law 108, 79th Cong., 1st Sess., are as follows:

SEC. 2 (j) Nothing in this Act shall be construed (1) as authorizing the elimination or any restriction of the use of trade and brand names; (2) as authorizing the Administrator to require the grade labeling of any commodity; (3) as authorizing the Administrator to standardize any commodity, unless the Administrator shall determine, with respect to such standardization, that no practicable alternative exists for securing effective price control with respect to such commodity; or (4) as authorizing any order of the Administrator fixing maximum prices for different kinds, classes, or types of a commodity which are described in terms of specifications or standards, unless such specifications or standards were, prior to such order, in general use in the trade or industry affected, or have previously been promulgated and their use lawfully required by another Government agency.[1]

* * * * *

SEC. 203 (a) *At any time after the issuance of any regulation or order under sec-*

[1] Entire subsection (j) added by sec. 5 (a), Public Law 151, 78th Cong., 1st Sess. (July 16, 1943), 57 Stat. 566.

tion 2, or in the case of a price schedule, at any time after the effective date thereof specified in section 206,[2] any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections.[3] Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing,[4] the Administrator shall either grant or deny such protest in whole or in part, notice such protest for

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[2] As amended by sec. 106 of Stabilization Extension Act of 1944. The section formerly read, in place of italicized language: "Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206."

[3] As amended by sec. 106 of Stabilization Extension Act of 1944. At this point the following language was stricken out: "At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days."

[4] As amended by sec. 106 of Stabilization Extension Act of 1944. At this point the following language was stricken out: "or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later."

hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

* * * * *

SEC. 204 (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided,* That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall

be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an

order of the Supreme Court denying such petition becomes final, or until other final disposition of the case by the Supreme Court.

* * * * * *

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price

schedule, or to restrain or enjoin the enforcement of any such provision.

(e) (1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 205 *of this Act or section 37 of the Criminal Code*[3] involving alleged violation of any provision of any regulation or order issued under section 2 or of any price schedule effective in accordance with the provisions of section 206, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the Administrator setting forth objections to the validity of any provision which the defendant is alleged to have violated *or conspired to violate*.[3] The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 203 (a). Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation, order, or price schedule complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the Administrator or

[3] Italicized provisions added by Public Law 108, 79th Cong., 1st Sess.

directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b), (c), and (d) of this section shall be applicable with respect to any proceeding instituted in accordance with this subsection.

(2) In any proceeding brought pursuant to section 205 *of this Act or section 37 of the Criminal Code*[*] involving an alleged violation of any provision of any such regulation, order or price schedule, the court shall stay the proceeding—

(i) during the period within which a complaint may be filed in the Emergency Court of Appeals pursuant to leave granted under paragraph (1) of this subsection with respect to such provisions;

(ii) during the pendency of any protest properly filed by the defendant under section 203 prior to the institution of the proceeding under section 205 *of this Act or section 37 of the Criminal Code,*[*] setting forth objections to the validity of such provision which the court finds to have been made in good faith; and

(iii) during the pendency of any judicial proceeding instituted by the defendant under this section with respect to such protest or instituted by the defendant under paragraph (1) of this subsection with respect to such provision, and until the expiration of the time allowed in this section for the taking of further proceedings with respect thereto.

Notwithstanding the provisions of this paragraph, stays shall be granted thereunder in civil proceedings only after judg-

[*] Italicized provisions added by Public Law 108, 79th Cong., 1st Sess.

ment and upon application made within five days after judgment. Notwithstanding the provisions of this paragraph, in the case of a proceeding under section 205 (a) the court granting a stay under this paragraph shall issue a temporary injunction or restraining order enjoining or restraining, during the period of the stay, violations by the defendant of any provision of the regulation, order, or price schedule involved in the proceeding. If any provision of a regulation, order, or price schedule is determined to be invalid by judgment of the Emergency Court of Appeals which has become effective in accordance with section 204 (b), any proceeding pending in any court shall be dismissed, and any judgment in such proceeding vacated, to the extent that such proceeding or judgment is based upon violation of such provision. Except as provided in this subsection, the pendency of any protest under section 203, or judicial proceeding under this section, shall not be grounds for staying any proceeding brought pursuant to section 205 *of this Act or section 37 of the Criminal Code,*[7] nor, except as provided in this subsection, shall any retroactive effect be given to any judgment setting aside a provision of a regulation or order issued under section 2 or of a price schedule effective in accordance with the provisions of section 206.[8]

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[7] Italicized provision added by Public Law 108, 79th Cong., 1st Sess.

[8] Entire subsection (e) added by sec. 107 (b) of Stabilization Extension Act of 1944.

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SUPREME COURT OF THE UNITED STATES.

Nos. 67 and 578.—October Term, 1945.

Thomas Paper Stock Company, et al., Petitioners, vs. Paul A. Porter, Price Administrator.	On Writ of Certiorari to the United States Emergency Court of Appeals.
Thomas Paper Stock Company, et al., Petitioners, vs. Paul A. Porter, Price Administrator.	

[April 22, 1946.]

Mr. Justice Frankfurter delivered the opinion of the Court.

Having been charged with violations of a price regulation, petitioners challenged its validity before the Emergency Court of Appeals by two different modes in two separate actions. The claim of invalidity in both proceedings was based on the Taft Amendment to the Price Control Act. Adjudication of this claim will dispose of both cases without consideration of procedural issues raised before the Emergency Court.

Thomas Paper Stock Company, a dealer in paper scrap, and its president were indicted under § 205(b) of the Emergency Price Control Act, 56 Stat. 23, 33; 50 U. S. C. § 925(b) for the sale of wastepaper in violation of Maximum Price Regulation No. 30, 7 Fed. Reg. 9732 (Nov. 24, 1942). Section 1347.14(d) of that regulation fixed the maximum price for unsorted wastepaper in terms of a specification or standard. *Id.* at 9735. On similar allegations, the Administrator later began an action against petitioners for treble damages. § 205(e), 56 Stat. 23, 34; 50 U. S. C. App. § 925(e). Both proceedings involved sales of wastepaper between July 16, 1943 and September 11, 1943. The dates are crucial. July 16, 1943 is the effective date of the Taft Amendment, the proper construction of which is the controlling issue. On September 11, 1943, the Administrator, by an amendment to the Maximum Price Regulation No. 30 "determined" that "no practicable alternative exists for securing effective price

control" with respect to such wastepaper except through the standardization defined in the pre-Taft Amendment Maximum Price Regulation No. 30. 8 Fed. Reg. 12554 (Sept. 14, 1943). The problem before us is whether, after the Taft Amendment sales of wastepaper were governed by a maximum price based on a standard, prior to the determination by the Administrator on September 11, 1943 that there was no practicable alternative to such standardization.

And so we turn to the Taft Amendment. It added subsection (j) to § 2 of the Emergency Price Control Act. The relevant provisions of the Taft Amendment are these:

> "(j) Nothing in this act shall be construed . . . (3) as authorizing the Administrator to standardize any commodity, unless the Administrator shall determine, with respect to such standardization, that no practicable alternative exists for securing effective price control with respect to such commodity; or (4) as authorizing any order of the Administrator fixing maximum prices for different kinds, classes, or types of a commodity which are described in terms of specifications or standards, unless such specifications or standards were, prior to such order, in general use in the trade or industry affected, or have previously been promulgated and their use lawfully required by another Government agency." 57 Stat. 566; 50 U. S. C. App. § 902(j).

We agree with the Emergency Court that Congress thus provided "three alternative situations in any one of which [the Administrator] is authorized to employ specifications or standards in connection with price control." *Thomas Paper Stock Co.* v. *Bowles*, 148 F. 2d 831, 835. Thus, in the case of wastepaper, standardization is permitted under Clause (3) of the Amendment although the Administrator may define a standard which "had not previously been used by the wastepaper industry or required by another Government agency." *Id.* at 837. But we are also of opinion that beginning with July 16, 1943, the day the Taft Amendment came into force, it precluded standardized commodity prices unless and until the Administrator "determined" that no other method of price control was practicable. The terms of the Amendment, in the circumstances of its setting, see, *e. g.*, H. R. Rep. No. 697, 78th Cong., 1st Sess. (1943), bring us to this conclusion, but we need add little to the full discussion the Taft Amendment received in the opinion of the Court and that of the dissent below. *Thomas Paper Stock Co.* v. *Bowles*,

153 F. 2d —. For us the decisive consideration is that the Amendment was a rigorous limitation upon the powers of the Administrator based upon the Congressional view that standardizations outstanding at the time the Taft Amendment was passed had not been authorized by the more general language of the original Act. § 2(h), 56 Stat. 23, 27; 50 U. S. C. App. § 902(h).[1] Accordingly, Congress laid down a specific requirement for the validity of prices based on standards, and a fair reading of the Amendment in the light of its history requires that the Administrator must indicate that he has fulfilled this requirement. See *United States* v. *B. & O. R. R. Co.*, 293 U. S. 454. It would hardly satisfy the restriction which the Taft Amendment placed upon the Administrator's power to standardize to allow him to continue situations which, as Congress thought, needed correction.

In signing the joint resolution containing the Taft Amendment, the President did so with the understanding that it "preserved the power in the Administrator to 'standardize' a commodity in any case on which this was absolutely essential to an effective system of fixing prices." See Statement of Price Administrator's Reasons Involved in the Issuance of Supplementary Order No. 64 (Sept. 11, 1943). Congress thus gave power to standardize; it did not stereotype past standardizations. With entire candor the Administrator conceded here that he "had many regulations outstanding which required re-examination in the light of the terms of the Taft Amendment." But although the Amendment apparently had the acquiescence of the Administrator, it contains no saving clause that all outstanding standardizing regulations were to be deemed continuingly valid, nor is there any intimation warranting such an implied limitation. The court below seemed to recognize the duty of a manifested determination by the Administrator of the need for a standardized price by suggesting that the Administrator showed "reasonable promptness" in making the determination applicable to wastepaper within two months after the Taft Amendment. But Congress did not sanction standardization for what we may deem a reasonable period after the enactment of the Taft Amendment without the Administrator's determination of its need.

[1] "The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, except to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act."

This is too substantial a qualification to be made by judicial interpolation. Nor can we draw on broad arguments about inflationary pressures on price control in construing legislation dealing with so technically confining a provision as that of the Taft Amendment. The legislation was too specifically directed against prior unauthorized regulations, promulgated no doubt with the best of motives in the great effort against inflation, for us to give it a meaning other than that which the language in the context of its history yields. Of course, all provisions of the Emergency Control Act are infused by its far-reaching aims. But the accommodation of the various interests involved in a system of price control are for Congress and not for us, and we must construe its legislation as fairly as we can to catch the will behind the words. That the construction we have placed upon the Taft Amendment does not touch the vital forces in price control is indicated by the Government's opposition to a review of this litigation on the ground that it was devoid of much practical significance.

It only remains to unsnarl the complicated procedures by which the petitioners sought to establish the invalidity of the regulation which they were charged with violating. On June 15, 1944, petitioners filed a protest against § 1347.14(d) under § 203(a) of the Act. 56 Stat. 23, 31, 58 Stat. 632, 638; 50 U. S. C. App. § 923(a). By this time, as has been noted, the Administrator had amended the regulation to conform in terms with the Taft Amendment. The Administrator denied the protest on the merits and also expressed doubt as to his power to consider the validity of a regulation of which the alleged defects had been cured. The Emergency Court of Appeals sustained the Administrator on the ground that a corrected regulation bars protest. *Thomas Paper Stock Co.* v. *Bowles*, 148 F. 2d 831. We then brought the case here as one of a series of cases raising important issues in the enforcement of the Emergency Price Control Act, 326 U. S. —.

In the meantime petitioners invoked § 204(e) of the Act, 58 Stat. 632, 639; 50 U. S. C. § 924(e), whereby they sought leave to file a complaint directly with the Emergency Court. The District Court, before which the criminal prosecution was pending, granted such leave pursuant to § 204(e). The Emergency Court then passed on the merits of the claim of the invalidity of the regulation in controversy between the date of the Taft Amendment

and September 11, 1944, when in Supp. Order 64, 8 Fed. Reg. 12554, the Administrator determined the necessity for standards. That court, as we have seen, held that the old regulation survived the Taft Amendment. *Thomas Paper Stock Co.* v. *Bowles*, 153 F. 2d —, and we granted *certiorari*, 326 U. S. —.

It is this latter judgment, in No. 578, that we now reverse with the result that disregard of the regulation based on standardized prices for wastepaper not "determined" by the Administrator prior to September 11, 1943, does not subject petitioners to the penalties of the Price Control Act. In view of disposition in No. 578 of the merits of petitioner's claim of invalidity under the Taft Amendment it would be futile to decide the issue on which judgment went in No. 67. Accordingly, the writ of *certiorari* issued in No. 67 will be ~~vacated~~ dismissed.

Mr. Justice JACKSON took no part in the consideration or decision of these cases.

Mr. Justice BLACK, dissenting.

The judgment which the Court just rendered permits this appellant and others to keep profits obtained from sales made at inflationary prices expressly prohibited by Maximum Price Regulation No. 30. That Regulation establishes dollar and cent ceiling prices for thirty-two grades of wastepaper defined by the Price Administrator. It is the type of regulation, of which there have been many, which controls prices by first standardizing or grouping similar commodities, and then fixing one and the same maximum price for each of the commodities in a particular classification. On July 16, 1943, long after Regulation No. 30 was promulgated and fully in force, Congress added the Taft Amendment, (Section 2(j)) to the Emergency Price Control Act of 1942. The Court holds that Congress intended by this amendment to invalidate automatically Price Regulation No. 30, and all the numerous regulations like it, until such time as the Price Administrator should find it possible, amidst all his pressing duties, to investigate and make determinations, formally expressed in writing, that only by standardizing or grouping certain commodities could price control over them be successfully enforced. Since the task of rechecking all past regulations which contained standardization provisions was very great, the Admin-

istrator did not find time to reach the Regulation here involved until two months after the Amendment's enactment. The Court holds that during this interval the public had no protection whatever from inflationary prices prohibited by this Regulation. In my opinion this holding finds support neither in the Section's language nor its legislative history.

When the sponsor of the Taft Amendment offered it on the Senate floor his statement clearly indicated that it grew out of cooperative effort between the legislators and the Price Administrator, who certainly would not be interested in throwing a monkey-wrench into O. P. A.'s enforcement of the existing regulations. Referring to provisions of the Act which his Amendment was intended to clarify, Senator Taft said: "Price Administrator Brown came before the committee and urged that it would seriously hamper his price regulations in a number of trades, regulations for which had already been issued, to many of which there was no objection. He submitted another form of amendment, carrying out the same purpose, but making it perfectly clear that it would not interfere with those regulations, which are proper." Cong. Rec. July 6, 1943, Vol. 89, p. 7251.

In spite of this clear declaration on the part of Senator Taft of his intention to save "proper" existing regulations, the Court now gives the Taft Price Administrator Amendment a meaning which does "interfere with those regulations." It not only interferes with them; it completely destroys their effectiveness for an indefinite interval of time. These appellants and others are wholly freed from any possible penalty for deliberate inflationary overcharges, forbidden by Congress, during the period between the passage of the Amendment and the Administrator's publication of his determinations. That the Regulation here involved was a "proper" regulation on the day the Taft Amendment was passed is conceded. That its standardization provisions were at all times necessary to the effective enforcement of the Act is shown both by the Administrator's later findings and by his original promulgation. Consequently, it is this Court, and not the Congress, which must take the responsibility for permitting appellants to violate the price regulation with impunity.

Furthermore, the Taft Amendment's language offers no support for the Court's decision. For by its terms it neither repeals nor renders unenforceable or ineffective valid outstanding regu-

lations which standardize commodities. And in addition to what has already been pointed out, the prevailing circumstances at the time of its enactment make it highly improbable that Congress intended such a result. At the time the Amendment was enacted the threat of inflation was the greatest since the outbreak of the war. Just in April the President had thought it necessary to issue his well-known "Hold-the-Line Order" in order to tighten controls designed to stem the inflationary trend. Purchasing power was very great and consumer goods had become extremely scarce. Had Congress really intended to protect the public against inflation, as its legislation shows it did, it would not have chosen this time for relaxing government controls. The giving of free reign to inflationary pressure was likely to endanger seriously our economy and to bring great hardship to many individuals. I cannot, without a clear declaration to that effect with respect to any part of our economy, impute to Congress an intent to let inflation run riot during such critical times. I cannot conclude, therefore, as the opinion of the Court necessarily does, that Congress intended to suspend all Maximum Price Regulations containing standardization provisions until the Price Administrator reviewed them.

What then was the purpose of Congress in enacting the Taft Amendment? The Managers on the part of the House thus stated the Section's purpose in the Conference Report on the Amendment: It "is to meet the objection that the Price Administrator has exceeded *the limitations expressed* in section 2(h) of . . . [the 1942 Price Control Act] . . . in issuing certain regulations already promulgated." (Italics supplied.) Section 2(h) provides: "The powers granted . . . shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, *except to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act.*" (Italics supplied.) As the Conference Report indicates, the Taft Amendment actually added little new, if anything at all, to the requirements already contained in Section 2(h). It was merely an explanation and elaboration of one phase of the requirements of Section 2(h). Any regulation, including the one here held invalid, that was promulgated when Section 2(h) was in effect had to meet its requirements. As later explained by the Taft

Amendment, the requirements of 2(h) which permitted the Administrator to require changed business practices to prevent "circumvention or evasion," included, in the case of regulations containing new standardization provisions, a determination that there was no practical alternative to effective price control. All standardization provisions, including the one here held invalid, in order to be valid under the old Section 2(h) had to be based on such a determination. The Taft Amendment was not, as the Court now holds, a declaration by Congress that all past standardization provisions had not been based on such a determination and that they were therefore invalid. Here the Regulation in question was promulgated while Section 2(h) was in full force and effect. Not only did petitioners fail to show that the Regulation was not based on the determination required by 2(h) as explained by the Taft Amendment, but the Administrator, after the Amendment was enacted, and before any proceedings were brought against petitioners, double checked the Regulation to make sure that it was based on the determination required. It is not denied, and apparently cannot be denied, that it was absolutely necessary for the Administrator to order these changed standardization practices in order to prevent circumvention or evasion. In my opinion, therefore, the wastepaper provisions of Maximum Price Regulation No. 30 were valid at all times, since they met the requirements of Section 2(h) as explained by 2(j). I would affirm the judgment below, which dismissed the complaint.

Mr. Justice DOUGLAS and Mr. Justice MURPHY join in this dissent.